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Rep. Joe Pitts, Chairman
Rep. Frank Pallone, Jr., Ranking Member

Hearing on

Cutting the Red Tape: Saving Jobs from PPACA's Harmful Regulations

September 15, 2011

Testimony presented by
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Executive summary

- While most companies initially hoped they would be able to preserve much of their existing group health plans under the new grandfather provisions, a survey by Aon Hewitt Consulting found almost all will not. The administration's own estimates indicate most employers will not be able to maintain grandfathered status.

- The grandfathering rules box employers into a corner. They cannot make changes, other than minor modifications, to their health plans to keep costs down without being forced to comply with expensive PPACA regulations that increase their health costs.

- Health costs are directly related to creation of new jobs. Higher health costs put additional pressures on the employer's bottom line and increase the cost of hiring new workers, in turn discouraging job creation. This is not good news for the economy or for unemployed workers.

- Many people argue that the ACA's restrictions are necessary to keep employers from cutting benefits or imposing higher health costs onto their employees. But employees actually pay the price for higher health costs since health coverage is part of employee compensation.

- A recent RAND study found that most of the pay increases that employees have received over the last ten years have been consumed by health costs. The study found that the typical family had just $95 a month more to devote to non-health spending in 2009 than they had a decade earlier. By contrast, the authors say that if the rate of health care cost growth had not exceeded general inflation, the family would have had $545 more per month in spendable income instead of $95 — a difference of $5,400 per year.

- It is in the interest of both employers and employees to keep health costs down, and the grandfathering regulations issued by HHS restrict their ability to do that.

- Health costs are a jobs issue. The administration recognizes that companies need relief from burdensome and expensive regulations that impact their competitiveness and their ability to generate the revenues they need to hire more workers. Withdrawing the grandfathering regulation would be a good place to start to give them that relief.

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By Grace-Marie Turner, Galen Institute

Thank you Chairman Pitts, Ranking Member Pallone, and members of the Committee for the opportunity to testify today about the rules that govern the ability of employers to protect health insurance policies under the "grandfathering" provisions of the Patient Protection and Affordable Care Act (PPACA).

"If you like your health insurance, you can keep your health insurance." That was the promise made to millions of Americans by President Obama and leaders in Congress many times in assuring them that the new health law would not disrupt the coverage they have now. In fact, many employers said assurances that their health plans would be "grandfathered" was a key reason that led to their support or to their taking a neutral stance on passage of the legislation. People who have and value their health coverage were also reassured. Surveys have shown that 88% of Americans are satisfied with their health coverage.[1] While most companies initially hoped they would be able to preserve much of their existing group health plans under the new grandfather provisions, a survey by Aon Hewitt Consulting found almost all will not.[2]

Even the administration now admits that this promise will not be kept. It expects that by 2013, between one-third and two-thirds of the 133 million people with coverage through large employers will lose their grandfathered status. And up to 80 percent of the 43 million people in small employer plans will lose their grandfathered protection. Up to 70 percent of those with

coverage in the individual market would be forced to comply with expensive new federal rules within a year.[3] Few of them are likely to lose coverage in the short term, but most will lose the coverage they have now.

The grandfathering rules box employers into a corner. They cannot make changes, other than minor modifications, to their health plans to keep costs down without being forced to comply with expensive PPACA regulations that increase their health costs.

Health costs are the issue

The human resources consulting firm Towers Watson released a survey of large employers regarding health costs.[4] Seven out of ten of the employers surveyed expect to lose grandfathered health status in 2012 — subjecting them to all of the new regulations and mandates under the new health law. Of even greater concern, nearly three in ten employers (29%) are unsure whether or not they will continue offering coverage to their current workers after all of the provisions of the new health law take effect.

Towers Watson reports that overall health plan costs are projected to rise at a 5.9% rate in 2012, continuing to rise faster than the rate of overall inflation. Because of rising health insurance costs and the other cost pressures that employers face, a majority of firms say they will be forced to increase the employee share of premiums in 2012. Only one percent of firms say they will be able to decrease the employee share of premium contributions next year.

Health costs are directly related to creation of new jobs. Employers continue to face a fragile economy. Higher health costs put additional pressures on their bottom line and increase the cost of hiring new workers, in turn discouraging job creation. This is bad news for the economy and for unemployed workers.

What all employers must cover

Under the Affordable Care Act, all health plans — whether or not they are grandfathered plans — were required to provide certain benefits for plan years starting after September 23, 2010, including:[5]

- Restrictions on lifetime limits on coverage for all plans. Starting in 2014, insurance plans must provide coverage without imposing any annual or lifetime limits on the amount paid to individual beneficiaries. During the transition years between now and 2014, however, insurance firms can impose annual limits, subject to HHS rules. The HHS regulations issued last June dictated how high these limits must be. In 2011, insurance companies can continue to impose an annual limit, but it must be at least $750,000 per enrollee. In 2012, the limit will have to be at least $1.25 million, and in 2013, $2 million. In 2014 there can be no limit on payouts for any individual's care.[6] This is the particular regulation that has led to 1,578 waivers being issued by HHS, primarily covering limited benefit plans offered by employers who said the higher cost could force them to drop the coverage altogether.[7]
- No rescissions. Plans may not rescind coverage after enrolling a participant, except in the case of fraud or limited circumstances.

- No coverage exclusions for children under age 19 with pre-existing conditions, and no pre-existing condition exclusions for anyone starting in 2014.[8]
- Group health plans that provide dependent coverage are required to extend coverage to adult children up to age 26 with no conditions on dependency.

A recent employer survey said that 28% percent of employers believe that compliance with PPACA rules already is increasing their health cost.[9]

Restrictions on plans hoping to keep grandfathered status

What do plans have to do in order to maintain their grandfathered status? A Health and Human Services Department fact sheet describes the restrictions.[10]

Compared to policies in effect on March 23, 2010, employers:

- cannot significantly cut or reduce benefits
- cannot raise co-insurance charges
- cannot significantly raise co-payment charges
- cannot significantly raise deductibles
- cannot significantly lower employer contributions
- cannot add or tighten an annual limit on what the insurer pays
- cannot change insurance companies. (This rule was later amended to allow employers to switch insurance carriers as long as the overall structure of the coverage does not violate other rules for maintaining grandfathered plan status. The amended rule specifically

directs that the new insurance carrier must precisely match the same terms of coverage that were previously in place.)

These rules mean, for example, that health plans and employers with plans in effect on March 23, 2010, lose their exempt — or grandfathered — status if they were to raise co-payments by the greater of $5 or a medical inflation rate plus 15 percent. Deductibles couldn't go up more than medical inflation plus 15 percent. In addition, employers couldn't cut the amount of the premium that they contribute by more than 5 percent.

Plans that lose their grandfathered status become subject to all of the reforms in the Act, including first-dollar coverage for preventive care, required coverage for certain clinical trials, quality reporting requirements, and implementation of internal and external appeals processes.

While most companies initially hoped they would be able to preserve much of their existing group health plans under the new grandfather provisions, a survey by Aon Hewitt Consulting found almost all will not. Ninety percent of companies said they anticipate losing grandfathered status by 2014, with the majority expecting to do so in the next two years. The same study found that among those companies with self-insured plans, 51 percent expect to first lose grandfathered status in 2011 and another 21 percent expect to lose it in 2012. The survey found that "Most employers would rather have the flexibility to change their benefit programs than be restricted to the limited modifications allowed under the new law."[11]

Why employers need flexibility

The employment-based health system in the United States has evolved from decisions made during World War II that gave favored status to health insurance offered through the workplace. Our system of employer-based health insurance is underpinned by generous tax incentives that allow employers to deduct the cost of health insurance as a part of their employee compensation costs and through a separate tax provision that shields the value of the policy from being taxed as income to the worker. These dual tax incentives have provided strong incentives for people to get their health insurance at work and have led to the system in which 158 million Americans get health insurance through the workplace.

Employers work very hard to find the balance in keeping the cost of health insurance as low as possible while offering the benefits that employees want and need. Part of the way they are able to do this is by seeking bids from competing insurers and amending and adjusting benefit structures. But under the grandfathering rules, employers are very limited in their ability to adjust current benefits without losing their grandfathered status. This also means they are limited in what they can do to help keep costs down.

The U.S. Chamber of Commerce, the largest U.S. business advocacy group, presented written comments on the grandfathering rules in August 2010, saying its first concern is with the restriction on cost-sharing. "By so severely restricting changes in cost-sharing, the regulations will effectively force plans to lose grandfathered status in order to remain solvent," the Chamber wrote.[12]

Employees pay the price of higher health costs

Many people argue that the ACA's restrictions are necessary to keep employers from cutting benefits or imposing higher and higher health costs onto their employees. But employees actually pay the price for higher health costs.

The cost of health coverage is part of employee compensation. A recent RAND study found that most of the pay increases that employees have received over the last ten years have been consumed by health costs.

Between 1999 and 2009, a median-income family of four that received health insurance through an employer saw their real annual earnings rise from $76,000 to $99,000 over the ten year period. But nearly all that gain was consumed by rising health care costs, according to the paper by David Auerbach and Arthur Kellermann of RAND. [13]

After taking into account the price increases for other goods and services, they said the typical family had just $95 a month more to devote to non-health spending in 2009 than they had a decade earlier. By contrast, the authors say that if the rate of health care cost growth had not exceeded general inflation, the family would have had $545 more per month in spendable income instead of $95 — a difference of $5,400 per year. Workers are paying the price for higher health costs.

Many companies have introduced plans that engage their employees as partners in managing health costs, giving them more control over health care and health spending decisions. These

companies have had success in holding down health cost increases. A 2011 survey for the National Business Group on Health on "purchasing value in health care" found that companies that offered account-based health plans, such as Health Savings Accounts or Health Reimbursement Arrangements, had coverage costs that were $900 lower than average for employee-only coverage and $2,885 lower for Preferred Provider and Point of Service (PPO/POS) plans.[14] "The cost of [account-based health plan] coverage is considerably more affordable than either PPO/POS plan or HMO plan coverage in 2011," the survey found. These premium savings benefit both employers and employees.

The number of people with HSA/HDHP (high-deductible health plan) coverage rose to more than 11.4 million in January 2011, up from 10 million in January 2010, 8 million in January 2009, and 6 million in January 2008.[15]

Of course consumer-directed plans are only one option of the wide array of policy choices offered in the private marketplace. But many employees and employers value this choice. Flexibility, rather than top-down rules, is essential for employers and employees to find ways to hold down health costs.

Relief from the grandfathering regulation

It is in the interest of both employers and employees to keep health costs down, and the grandfathering regulations issued by HHS restrict their ability to do that. Health costs are a jobs issue.

I understand that legislation is being drafted to reverse the interim final regulation issued by HHS on June 17, 2010. Reversing this regulation would give employers the flexibility they need to manage their health costs and find the balance between health costs, wages, and hiring new workers. The administration recognizes that companies need relief from burdensome and expensive regulations that impact their competitiveness and their ability to generate the revenues they need to hire more workers. Withdrawing the grandfathering regulation would be a good place to start.

Thank you for the opportunity to testify today, and I will be happy to answer your questions.

ENDNOTES

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[6] John Hoff and John E. Calfee, "The Contradictions of ObamaCare," *The American*, February 10, 2011, http://www.american.com/archive/2011/february/the-contradictions-of-obamacare.

[7] "Annual Limits Policy: Protecting Consumers, Maintaining Options, and Building a Bridge to 2014," The Center for Consumer Information & Insurance Oversight, Accessed September 13, 2011, http://cciio.cms.gov/resources/files/approved_applications_for_waiver.html.

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requiring them to cover these children. For more information, Robert Pear, "Insurers to Comply With Rules on Children," *The New York Times*, March 30, 2010, http://www.nytimes.com/2010/03/31/health/policy/31health.html.

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